

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2728 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAMNABEN PREMAJI & ORS.

Versus

STATE OF GUJARAT

Appearance:

MR GR SHAIKH for Petitioners

MS PREETI S PARMAR for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/01/97

ORAL JUDGEMENT

1. Heard learned counsel for the parties. In this writ petition the counsel for the petitioners raised several contentions, but I do not consider it necessary to advert to all those contentions except the one which according to me is sufficient to allow this Special Civil Application.

2. The contention of the counsel for the petitioners

is that the order dated 6-10-1983 of the Secretary (Appeals), Revenue Department of the State of Gujarat, Ahmedabad, has been passed in violation of the principles of natural justice. To appreciate this contention, the facts which are relevant are to be taken briefly, which are as under:

3. The petitioners no.1 to 5 are the original owners and occupants of the lands bearing Survey no.54 and 55 admeasuring 1 acre and 16 gunthas and 2 acres and 1 gunthas respectively of Okaf Taluka, District Ahmedabad. The petitioners no.6 and 7 are the purchasers of the said lands from the petitioners no.1 to 5. After having obtained the permission in respect of the construction on the disputed land from the Group Gram Panchayat, Sarkhej, the petitioners have constructed a building for the purpose of running a restaurant that is a hotel building on the land in dispute. This construction is sought to be approved by the Group Gram Panchayat after verification, and Gram Panchayat is recovering the taxes.

4. The dispute has arisen when the District Development Officer, District Panchayat, Ahmedabad called upon the petitioners to showcause under its notice as to why any action under sec.66 of the Bombay Land Revenue Code be not be taken against them in respect of the construction they have executed on the land in dispute without obtaining a permission from the competent authority. The reply to that showcause notice has been submitted and a final order has been made by the District Development Officer, District Panchayat, Ahmedabad on 9-8-1982 and the construction of the restaurant on the land in dispute was held to be unauthorised and the same was ordered to be demolished within 30 days from the date of receipt of the order and further order has been made that the land be put to agricultural purpose.

5. The petitioners preferred a revision before the Secretary (Appeals), Revenue Department of the State of Gujarat. The appeal came to be allowed by the appellate authority under its order dated 30th November, 1982 and directed the lower authority to decide the matter in the light of the observations made therein. It appears that on remand of the matter again the District Development Officer, District Panchayat, Ahmedabad under its order dated 1-9-1983 decided the matter against the petitioners. The petitioners have taken up the matter again in revision before the Secretary (Appeals), Revenue Department of the State of Gujarat, but without giving opportunity of hearing to the petitioners, the said authority returned the revision application to the

petitioners with the direction that as the order passed by the District Development Officer has been passed at the instructions of the State Government nothing remains to be done in the matter. It is not in dispute that the order of the revisional authority dated 6-10-1983, impugned in this Special Civil Application, has been passed without giving an opportunity of hearing to the petitioners.

6. On this short ground, this Special Civil Application deserves to be accepted. Before making any order of return of the revision application, the revisional authority should have heard the petitioners and only thereafter appropriate order could have been made. The petitioners in case would have been afforded an opportunity of hearing could have satisfied the said authority that the revision application is maintainable.

7. In the result, this Special Civil Application succeeds in part and the order of the revisional authority dated 6-10-1983, annexure 'C' is quashed and set aside and the revisional authority is directed to decide the revision application of the petitioners after giving them an opportunity of hearing. The revision application is returned back to the petitioners, the original has been filed by the petitioners alongwith this Special Civil Application as annexure 'E'. It is hereby directed to the office to return this annexure 'E' to the counsel for the petitioners. The counsel for the petitioners is directed to present this revision application before the revisional authority immediately on receiving it from the office of the court. The revisional authority shall decide the revision application after hearing the petitioners within three months next thereafter. Till then the interim relief which has been granted by this court shall continue. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-